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Before the Committee on Disaster Recovery, Infrastructure & Planning

Thirty-Sixth Legislature of the Virgin Islands

Hearing: "Heirs Property, Prolonged Probate, and Vacant & Abandoned Historic Properties in the U.S. Virgin Islands"

January 29, 2026

EXECUTIVE SUMMARY

1. UHPHA is a sound framework once the necessary parties are identified and properly before the Court. **The biggest practical barrier is upstream:** identifying heirs, proving lineage, locating heirs, and accomplishing meaningful notice/service in multi-generation and diaspora families. Delay is not neutral. While matters sit in service limbo or await letters, no one has clear authority to secure, insure, repair, or stabilize property. That authority gap is when historic structures deteriorate into vacant and abandoned properties.
2. Prevention matters. **Transfer-on-death (TOD) deeds (Act 8169) are one of the strongest tools** the Territory has adopted to prevent heirs property. The statutory requirement that TOD deeds be recorded before death is good policy; however, current **cadastral attestation timelines can cause TOD deeds to fail in urgent end-of-life situations**, defeating the statute's purpose.
 - a. The principal administrative bottleneck is upstream of the Recorder of Deeds: for non-condominium, non-timeshare parcels, recordability depends on obtaining cadastral attestation of the legal description. That step can take weeks, and in real cases a transferor can die before the description is attested and the deed can be recorded.
 - b. Administrative improvements, including digitization of the maps filed with cadastral, improved access to vital records, and published, transparent processing procedures across Cadastral and the Recorder of Deeds would reduce delay, even without new statutes.
3. Two high-leverage statutory changes would materially reduce delay in probate: (1) **modernize non-resident administrator rules to reflect the Virgin Islands' diaspora reality**; and (2) create a **limited, fast pathway for temporary estate authority** to preserve and stabilize real property while notice, waivers, and full appointment steps are completed.
4. Targeted statutory standards for **heir-search diligence** (and a predictable pathway for unknown or unlocatable heirs) can protect due process while preventing indefinite paralysis.

I. INTRODUCTION AND QUALIFICATIONS

Chairperson and members of the Committee: thank you for the opportunity to testify. Your invitation explains that the purpose of this hearing is to examine the challenges associated with unresolved heirs property and prolonged probate, particularly where delay contributes to vacant, abandoned, and deteriorating historic properties, and to identify practical legal, administrative, and policy solutions.

I have been licensed to practice law in the U.S. Virgin Islands since 2017 and have practiced law for 18 years. My work focuses on probate and estate administration, estate planning, and title and real property law, including chain-of-title analysis and the resolution of probate-related clouds on title. In practice, I spend a significant portion of my time tracing ownership across decades, identifying defects in chains of title, and helping families and institutions resolve those defects so property can be insured, financed, repaired, occupied, and transferred. I am also the LexisNexis Practical Guidance author for Estate Planning in the U.S. Virgin Islands.

I am offering this testimony through a property and title lens: vacancy and abandonment often begin as title problems that become time problems, and time is exactly what historic structures do not have. This issue belongs before the Disaster Recovery, Infrastructure & Planning Committee. In the wake of storms, families often need to prove ownership quickly to access insurance proceeds, FEMA or other disaster-assistance programs, and repair financing. When title is unclear or no fiduciary has authority, homes sit exposed to weather, vandalism, and compounding damage. The result is not only a private family loss; it is neighborhood blight, public safety risk, and reduced resilience.

A core point for this hearing is that the Virgin Islands does not have a single “delay” problem; it has a series of upstream bottlenecks that compound. A particularly important distinction is that, for Revocable Transfer on Death deeds (*the only type of deeds that are not legally effective until recording*) for non-condominium and non-timeshare parcels, the delay is not the Recorder of Deeds’ indexing or scanning; the practical delay often occurs earlier, as the legal description must be attested through the Office of Cadastral before the instrument is recordable. When that upstream step takes weeks, families can do everything correctly and still lose legal rights that depend on timely recordation.

II. THE HEART OF THE MATTER: HEIRS PROPERTY AND PROLONGED PROBATE AS AN “AUTHORITY GAP” PROBLEM

The legal system often does not fail because it lacks remedies; it fails because it cannot quickly identify who has rights and who has authority. When a property owner dies without a completed estate plan and without a timely estate administration, the property is trapped in a dangerous window:

- No clear decision-maker while letters are pending (the authority gap).
- No reliable ability to insure, secure, or contract for repairs and stabilization.

- Difficulty paying taxes, utilities, and liens; and responding to code enforcement issues.
- Higher risk of trespass, vandalism, and deterioration.
- Eventual vacancy and abandonment (especially for historic structures that degrade rapidly).

UPHPA is important and protective, but it operates after the court has a usable list of heirs and the parties are properly before it. The bottleneck is getting to that starting line. In my experience, the longer a matter remains unresolved, the more likely it becomes that heirs disengage, evidence becomes harder to obtain, and repairable damage becomes structural loss. That is the pipeline from title problem to vacant and abandoned property.

III. UHPA IN PRACTICE: STRONG FRAMEWORK, BUT CASES STALL AT HEIR IDENTIFICATION AND NOTICE

Act 8169 adopted the Uniform Partition of Heirs Property Act (UPHPA) by adding a subchapter to Title 28, Chapter 21. UHPA is designed to protect family ownership while creating a fair path to resolution through appraisal, buyout options, and controlled sale procedures. In my experience, UHPA itself is not the core problem; it is a sound framework once the necessary people are identified and before the Court.

A. THE DOMINANT BOTTLENECK: IDENTIFYING AND LOCATING HEIRS

In many heirs-property matters, the “heirs list” is not a list; it is a multi-generation genealogy project. Common realities include multiple deceased owners across generations with no probate ever opened, heirs who moved off-island years ago (with outdated addresses or name changes), missing or hard-to-obtain birth, death, marriage, and divorce documentation, and inconsistent spellings and “known by” names that do not match formal records. Until heirs are identified and properly brought into the case, families cannot access the tools UHPA provides.

B. NOTICE AND SERVICE ARE ESSENTIAL – BUT THEY BECOME THE LONGEST PHASE OF MANY CASES

Due process safeguards matter, but in practice, the notice and service phase can become the longest part of many cases because families often lack realistic access to heir-location tools and reliable current contact information. The result is prolonged “service limbo,” even when the family wants resolution. A statutory framework that defines reasonable diligence and provides a predictable mechanism for unknown or unlocatable heirs can protect due process while preventing indefinite paralysis.

C. VALUATION SHOULD NOT BECOME A DELAY ENGINE

UPHPA requires valuation. Appraisals are often appropriate and necessary, but appraisal logistics should not become an open-ended pause point in a system already under strain. When valuation becomes a scheduling loop, it compounds backlog and pushes properties further into

neglect. In routine probate contexts (inventory, bond-setting, administrative decisions), a tax-assessed value default (subject to timely objection) can reduce delay while preserving an appraisal pathway for genuine disputes.

IV. PRIMARY CAUSES OF PROLONGED PROBATE THAT DRIVE VACANCY AND ABANDONMENT

A. THE “LETTERS AUTHORITY GAP” IS THE MOST DESTRUCTIVE PERIOD FOR REAL PROPERTY

Until letters issue, no one has recognized authority to act on behalf of the estate. That gap is when properties are most vulnerable: utilities lapse, insurance is unavailable or uncertain, repairs cannot be contracted, liens cannot be addressed, and preventable damage becomes permanent damage. Historic properties are especially unforgiving in this window. A limited, fast pathway for temporary authority (focused on preservation, not distribution) would materially reduce preventable deterioration.

B. DIASPORA REALITIES AND NON-RESIDENT ADMINISTRATOR BARRIERS DELAY APPOINTMENTS

Many intestate estates stall because the most capable heir lives off-island, an extremely common reality for Virgin Islands families. If the law and practice make it impossible for non-residents to serve as administrators in intestate administration, the case can stall before it starts. Modernizing the non-resident administrator laws to allow off-island heirs to serve with common-sense safeguards (consent to jurisdiction, resident agent for service, bond when appropriate) would reduce delay without sacrificing accountability.

C. PROCEDURAL WAIVER-FIRST DYNAMICS CAN FREEZE UNCONTESTED CASES

With full respect for separation of powers: in many multi-heir estates, delay is driven by the practical reality that courts require (and practitioners are required to obtain) consents, waivers, oaths, affidavits, and partial inventories to submit *with the initiating petition* for probate *before* any authority is granted, even when the estate is uncontested. One missing heir’s waiver can freeze the case for months, requiring requests for citations and hearings later. A statutory mechanism for temporary, preservation-only authority can reduce the harm caused by front-loaded probate petitions while preserving due process and the right to object.

V. PREVENTION: TOD DEEDS ARE WORKING POLICY, BUT CADASTRAL TIMELINES CAN DEFEAT THEM

UPHPA is a necessary remedy, but it only operates after heirs property has already been created. Prevention is equally important and Act 8169 gave the Virgin Islands a powerful prevention tool: transfer-on-death (TOD) deeds. What makes TOD deeds uniquely fragile is that, unlike ordinary deeds, their validity is not secured by execution and delivery alone. Recording is

not just notice; it is the trigger for effectiveness. TOD deeds are, therefore, uniquely vulnerable to administrative delay.

A. THE PRACTICAL PROBLEM IS TIME: END-OF-LIFE URGENCY PLUS CADASTRAL ATTESTATION DELAYS

In current practice, deeds for non-condominium, non-timeshare parcels cannot be recorded until the property description is attested through the Office of Cadastral. That process can take weeks. For a TOD deed that is effective only if recorded before death, weeks can be dispositive, especially for a transferor who is critically ill.

This is not hypothetical. When someone is very sick, I am often forced to recommend a trust and a deed into trust (tools that can be recorded after death) because I cannot reliably guarantee that a TOD deed will clear Cadastral processing and be recorded in time. That increases cost and complexity at the worst possible moment and defeats the purpose of a statute designed to prevent probate delay.

B. LEGISLATIVE SOLUTION: A TOD RECORDABILITY SAFE HARBOR THAT TARGETS CADASTRAL TIMING (WITHOUT WEAKENING THE RECORDING REQUIREMENT)

The fix is not to remove the recording requirement; it is to make recordability objective and predictable so families can use the tool Act 8169 created. A statutory safe harbor can require acceptance of a TOD deed for recordation when the deed either: (1) references and attaches the transferor's most recent deed of record, or (2) reproduces the legal description from that deed exactly. Under that safe harbor, pre-recording "modernization" of property descriptions already in existence or attestation from the Office of the Cadastral should not be a condition precedent to recording. TOD deeds are not sales or present transfers of real estate; they are a probate avoidance tool. Any Cadastral updating can occur after recordation or at a subsequent conveyance.

C. POST-DEATH CONFIRMATION CLARITY

Where a TOD deed was recorded during the owner's lifetime, the law should clearly state what must be recorded after death (for example, a certified death certificate) so beneficiaries can evidence ownership promptly in the land records and proceed with insurance, repairs, and eventual conveyance. This will make title insurability a clearer process.

VI. RECOMMENDATIONS

I recommend a combination of targeted statutory reforms and administrative improvements.

A. STATUTORY REFORMS

1. TOD deed recordability safe harbor and time-stamp rule focused on cadastral reality.

Create a clear, objective pathway for recording TOD deeds quickly (without weakening the pre-death recording requirement) and define the effectiveness point by reference to acceptance for recordation under the statutory safe harbor.

2. Non-resident administrator modernization.

Amend the non-resident administrator statute to allow off-island heirs to serve with common-sense safeguards: consent to jurisdiction, a Virgin Islands resident agent for service (or local counsel authorized to accept service), and bond where appropriate.

3. Temporary letters for preservation of real property.

Create a limited form of temporary estate authority (available quickly in uncontested matters) to secure, insure, and maintain real property while notice and full appointment steps proceed.

4. Standardize heir-search diligence and create a pathway for unknown or unlocatable heirs.

Require an Heir Search Affidavit or standardized diligence checklist and authorize a predictable mechanism (guardian ad litem, protected deposit or custodial trust for shares, and court findings of diligence) so one missing heir does not freeze an entire case indefinitely. Public notice standards are long and outdated.

5. Valuation defaults for routine probate contexts.

For inventory and bond-setting in routine probate administration, default to the most recent tax-assessed value unless timely objected to; preserve a path for appraisal where there is good cause or a genuine dispute.

6. Targeted UHPA “case-moving” timelines where appraisal logistics otherwise create open-ended delay.

Where an appraisal is ordered, set a default completion timeline subject to extension for good cause, and allow tax-assessed value or other evidence when appraisal cost outweighs evidentiary benefit.

B. ADMINISTRATIVE IMPROVEMENTS

- Digitized, public access to cadastral mapping tools and clearer guidance on recordable descriptions for legacy parcels.
- Published procedures and transparent processing timelines for cadastral attestation and for recording queues, with an identified process for time-sensitive instruments.
- Faster access to vital records and stronger inter-agency coordination (Vital Records, Cadastral, Recorder of Deeds) so families can move through probate and title cure steps in real time.

C. PROCEDURAL COLLABORATION WITH THE JUDICIARY

The Legislature cannot amend court rules, but it can convene and encourage collaboration so avoidable procedural delays do not drive vacancy and abandonment. A practical goal is to reduce waiver-first dynamics that prevent any authority from issuing, even in uncontested cases, and to modernize notice methods so they reflect how people are actually reached in 2026.

VII. CONCLUSION

UPHPA provides important protections and a fair framework once the necessary parties are identified and before the Court. But the primary practical barrier I see is upstream: locating heirs, accomplishing meaningful notice, and issuing authority fast enough to prevent real property from deteriorating in the meantime.

Delay is not neutral; when authority cannot be obtained promptly, properties deteriorate, heirs disengage, and solvable title problems become vacant and abandoned historic properties. The Virgin Islands has already adopted strong tools (including TOD deeds and UPHPA). With a few targeted fixes to make those tools work in real time (particularly by addressing cadastral attestation timing for time-sensitive instruments) the Territory can materially reduce prolonged probate, prevent new heirs-property formation, and protect historic properties and neighborhoods.

Thank you for the opportunity to testify. I am available to assist further, including providing refined bill language and implementation details consistent with these recommendations.

APPENDIX A: DRAFT STATUTORY LANGUAGE FOR DISCUSSION

NOTE: This draft is provided as discussion language only. Final bill drafting should be conformed to the Virgin Islands Code's codification style and coordinated with Legislative Counsel, the judiciary (as appropriate), and relevant executive agencies (Office of Cadastral, Recorder of Deeds, Vital Records).

1. Title 15, Chapter 13, Subchapter III (Real Property Transfer on Death): Recordability safe harbor and time-stamp rule

SECTION 1. 15 V.I.C. § 209 is amended by adding new subsections (d), (e), and (f) to read:

(d) Recordability safe harbor; cadastral attestation not required as a condition precedent (transfer on death deeds). Notwithstanding subsection (a) (1) or any other provision of law requiring cadastral attestation or modernization of a legal description as a condition precedent to recordation, the Recorder of Deeds shall accept a transfer on death deed for recordation if the deed identifies the property by either of the following methods:

(1) Reference-by-record method. The deed references the transferor's most recent deed of record for the property by the recording reference used by the Recorder of Deeds (including book and page, instrument number, or other unique recording identifier), and attaches a copy of that deed as an exhibit to the transfer on death deed; or

(2) Exact-match method. The deed states a legal description that is an exact reproduction of the legal description contained in the transferor's most recent deed of record for the property.

(e) Post-recording cadastral updating permitted. Any cadastral mapping update, modernization, or description standardization related to property recorded under subsection (d) may be completed after recordation or in connection with a subsequent conveyance, and shall not affect the validity or effectiveness of the recorded transfer on death deed.

(f) Time-stamp; effect of administrative processing. For purposes of subsection (a) (3), a transfer on death deed shall be deemed recorded if, before the transferor's death, the deed is (1) presented to the Office of the Recorder of Deeds for recordation with the required recording fees, and (2) accepted for recordation and stamped "received" (or the Recorder's equivalent) with the date and time of receipt. The subsequent indexing, scanning, or administrative processing of the deed may occur after the transferor's death without affecting the effectiveness of the deed under this subchapter.

SECTION 2. A new section 15 V.I.C. § 213a is added to read:

§ 213a. Evidence of transfer; recording of death certificate

(a) Upon the transferor's death, a beneficiary of a recorded transfer on death deed may record a certified copy of the transferor's death certificate in the Office of the Recorder of Deeds for the district where the property is located.

(b) The recorded transfer on death deed together with the recorded death certificate constitutes prima facie evidence of the transfer of the

transferor's interest in the property to the beneficiary, subject to any encumbrances, liens, or claims not extinguished by law.

2. Title 15 (Probate): Non-resident administrator modernization

SECTION 3. 15 V.I.C. § 235 is amended by adding new subsections (d) and (e) to read:

(d) Non-resident administrators. Notwithstanding any other provision of law, the Court may appoint as administrator or personal representative a person who is not a resident of the Virgin Islands if the proposed fiduciary:

(1) files a written consent to the jurisdiction of the courts of the Virgin Islands for all matters arising from the administration;

(2) designates a resident agent in the Virgin Islands for service of process, or appears through local counsel authorized to accept service;

(3) provides a current mailing address, email address, and telephone number for receipt of notices; and

(4) posts a bond if required by the Court based on the circumstances of the estate.

(e) The Court may remove a non-resident fiduciary for failure to maintain a resident agent, failure to comply with reporting requirements, or other cause shown.

3. Title 15 (Probate): Temporary letters for preservation of real property

SECTION 4. A new section is added to Title 15 to create limited temporary authority for property preservation:

§ _____. Temporary special administrator; preservation of real property

(a) Appointment. Upon petition by an interested person, the Court may appoint a temporary special administrator and issue temporary letters for the limited purpose of preserving, securing, and maintaining real property of a decedent's estate.

(b) Scope of authority. Unless otherwise limited by the Court, temporary letters under this section authorize the temporary special administrator to:

(1) secure and protect real property, including changing locks, boarding openings, and taking reasonable measures to prevent waste;

(2) obtain or maintain property insurance;

(3) pay property taxes, utilities, and necessary expenses to prevent loss or deterioration;

(4) contract for emergency or necessary repairs not exceeding an amount set by the Court without further order; and

(5) take reasonable steps to prevent trespass and vandalism, including retaining counsel to seek injunctive relief or ejectment where appropriate.

(c) Duration and transition. Temporary letters shall be effective for a period not to exceed 90 days, unless extended for good cause, and shall terminate upon issuance of full letters to a personal representative.

(d) Notice. The petitioner shall provide notice of the appointment to

known heirs and interested persons within a time set by the Court, and the Court shall provide an opportunity to object.

(e) Bond and reporting. The Court may require bond and may require a written report of actions taken and expenditures made under the temporary letters.

4. Title 15 (Probate): Standardize heir-search diligence and an off-ramp for unknown or unlocatable heirs

SECTION 5. A new section is added to Title 15 to standardize good-faith diligence to identify and locate heirs:

§ _____. Heir Search Affidavit; good-faith diligence; appointment of guardian ad litem

(a) In any probate proceeding in which a petitioner seeks an order affecting real property and there are potential heirs whose identities or locations are unknown, the petitioner shall file an Heir Search Affidavit describing the good-faith steps taken to identify and locate heirs.

(b) The Heir Search Affidavit shall, to the extent reasonably possible, address:

- (1) requests for available birth, death, marriage, and divorce records and the results of those requests;
 - (2) review of recorded deeds and available probate records;
 - (3) contact with known relatives and other persons reasonably likely to have information about the family lineage;
 - (4) mail notice to last known addresses of potential heirs;
 - (5) reasonable online search methods and documentation of the results;
- and
- (6) any other steps ordered by the Court.

(c) Upon a finding that the petitioner exercised good-faith diligence but one or more heirs remain unknown or unlocatable, the Court may:

- (1) appoint a guardian ad litem to represent the interests of unknown or unlocatable heirs; and/or
- (2) authorize the proceeding to move forward subject to such equitable protections as the Court deems appropriate, including preservation of later-appearing heirs' rights consistent with due process.

5. Title 15 (Probate): Real property valuation default for routine probate contexts

SECTION 6. A new section is added to Title 15 to standardize valuation of real property for routine probate purposes:

§ _____. Valuation of real property for inventory, bond, and probate administration

(a) Default valuation. In the absence of a timely objection or a finding of good cause, the value of real property listed in a probate inventory, used to set bond, or used for routine administrative determinations shall be the property's most recent tax-assessed value as reflected in the records of the Office of the Lieutenant Governor.

(b) Objection; appraisal. Any interested person may object to use of the tax-assessed value within a time set by the Court. Upon objection, or upon the Court's own motion for good cause, the Court may order an appraisal or other valuation evidence.

(c) No effect on sale price. This section governs valuation for probate administration purposes only and does not establish a required sale price for any conveyance.

6. Title 28, Chapter 21, Subchapter II (UPHPA): Case-moving timelines and use of tax assessment when appraisal cost outweighs benefit

SECTION 7. 28 V.I.C. § 516 is amended by adding new subsections (d) and (e) to read:

(d) When the Court determines under subsection (c) that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the Court may determine fair market value based on the property's most recent tax-assessed value and any other evidence presented, including comparable sales information or broker price opinions, and shall make written findings supporting its determination.

(e) Timing. Unless extended for good cause, an appraisal ordered under this section shall be completed and filed with the Court within 45 days after appointment of the appraiser, and the Court shall schedule any required hearing promptly thereafter.

7. Title 15 (Custodial Trust): Explicit option for minors' or protected persons' shares in probate and partition proceeds

SECTION 8. A new section is added to Title 15 to clarify use of custodial trusts for protected shares:

§ _____. Custodial trust option for minors or protected persons in probate and partition

(a) In any probate proceeding, heirs-property proceeding, or partition proceeding in which a minor or protected person is entitled to a distributive share (including sale proceeds), the Court may direct that such share be paid into a custodial trust established under Title 15, Chapter 60, in lieu of requiring a separate guardianship proceeding, upon a finding that the custodial trust will adequately protect the beneficiary.

(b) The Court may require bond, accounting, and such other safeguards as justice requires.

8. Effective date

SECTION 9. This Act takes effect 90 days after enactment.